IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 9846 of 1989

Between:

1 L.L.Sudhaker Reddy S/o.Veera Reddy
R/o Begumpet , Hyderabad.
2 Zohra Sultana W/o Mirza Hussain Ali Seizar
Rep by G.P.A.Aliasgar Seizar S/o.Mirza Hussaini

Ali saizer, Age 45 yrs., R/o Hyderabad. Rep. by GPA

Mohd.Ali Asgar Saizer
3 Khateeja shabeen , D/o. Mirza Hussain Ali Seizar
R/o.U.S.A. Rep by G.P.A.Ali Asgar Seizar

S/o Mirza Hussaini Ali saizer Age 45 yrs.

R/o.Hyderguda , Hyderabad.

4 Vishwa Saptagiri Cooperative Housing Society

Regd.No.TAB 425/1981 Rep by its Secretary

Mr.L.Rajasekhar Reddy, Office at H.No.6-3-1176,

Begumpet , Hyderabad. **..... PETITIONERS**

AND

1 State of A.P., Rep by its Mandal Revenue Officer
Golconda , Hyderabad.
2 Special Court Under the A.P.Land Grabbing

(Prohibition) Act ,1982 Rep by its Registrar,

Basheerbagh , Hyderabad.

3 Municipal Corporation of Hyderabad

Rep by its Commissioner,
Lower Tank Bund Road , Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Certiorari by calling for the records of the 2nd respondent herein containing the impugned order of the 2nd respondent namely the one Dt; 1-6-1989 made in LGC 21/1988 and quash the same as being totally unconstitutional, illegal and without Jurisdiction and pass such other order or orders.

Counsel for the Petitioners: Mr.M.SURENDER RAO

Counsel for the Respondents 1&2: Mr. A.SATYA PRASAD, SPECIAL G.P. for Advocate General

Counsel for respondent No.3:Mr.A.Ravishankar

The Court made the following :

ORAL JUDGMENT : (per THE HON'BLE THE CHIEF JUSTICE)

On 1-6-1989 an order was passed in L.G.C.No.21 of 1988 on the file of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act,1982; against which, petitioners felt aggrieved and filed this writ petition praying to set aside the said order and to dismiss the Land Grabbing Case.

Writ Petition was dismissed with costs on 16-6-1992 against which an appeal was preferred in Writ Appeal No.680 of 1992. It was also dismissed by a Division Bench of this Court on 23-7-1992. Petitioners thereafter carried the matter to the Supreme Court by filing Special Leave Petition, which was ordered and it was registered as Civil Appeal No.6731 of 1994. The Supreme Court on 9-8-2001 allowed the appeal, thereby set aside orders passed by Division Bench in Writ Appeal as well as learned single Judge in writ petition. Writ Petition was, however, restored to the file of this Court with direction to decide the same afresh in accordance with law.

During the interregnum, as per the Rules of Practice against the Orders of Special Court under the A.P. Land Grabbing (Prohibition) Act,1982, writ petitions are heard

by Division Bench and that is how, this writ petition has been posted before us.

The Supreme Court found fault with the manner in which writ petition has been disposed of observing that against the orders passed by the Special Court, the remedy of review under Section 17A of the A.P. Land Grabbing (Prohibition) Act,1982 was available and a suit for declaration of title and right was also a remedy available to petitioners. The Supreme Court held that a suit, having regard to the provisions of sub-Section (2) of Section 8 read with Section 15 of the Act, was not entertainable by civil Court and even a review was not the remedy available to writ petitioners and thus the orders passed by learned single Judge and Division Bench were set aside and petition was remanded to be heard afresh.

We commenced hearing and have been taken through record by learned counsel for the parties.

Material allegation on which respondents instituted proceedings against petitioners were that petitioners had encroached upon Government land to the extent of Ac.5.00 in Sy.No.403/1 of Shaikpet village situated at Road No.10, Banjara Hills and made plots and sold them to interested persons by collecting money and they had raised temporary structures and are residing in them. It was alleged that as per Government records, Plot Nos.11,12 and 13 in Sy.No.403/1 of Shaikpet village were unrecognized plots and they are treated as Government land. Its estimated value was Rs.48,40,000/-. It is a valuable land and useful for house sites.

Writ petitioners contested the proceedings and denied material allegations stating that respondent No.1 had no title, right or interest in the land and the land does not form part of Government land. Farhatullah and Mirza Mohd.Ali, the then First Talukdar, Aurangabad and Deputy Director of Forest in the erstwhile Hyderabad Government respectively submitted applications to the Executive Officer of erstwhile Jubilee Hills Municipality for allotment of plot Nos.11,13 and 12 respectively in Sy.No.403 of Shaikpet village and on payment of sale consideration, the said plots were assigned to them. Thereafter, one Zehera Sulthana was alleged to have purchased land in plot Nos.11 and 13 on the basis of two registered sale deeds dated 18-5-1965 and 3-6-1965 from Farahtullah. Similarly, Smt.Khateeza Shahin purchased land in Plot No.12 from Mirza Mohd.Ali through sale deed dated 3-6-1965. It was also alleged that ever since the date of purchase, said owners had been in peaceful and uninterrupted possession and enjoying in their own right of

their respective properties and prior to them, the original owners were in uninterrupted possession and enjoyment of the land. Smt. Khateeza Shahin and Smt. Zehera Sulthana are alleged to have applied for effecting mutation of their names in the revenue records in the year 1967-68, which was still pending consideration. Petitioner No.1 has alleged that he entered into an agreement of sale in respect of said properties with the owners represented by their General Power of Attorney. Owners had been paying land revenue to the Government till the date of filing of LGC and no objection had been raised either by the Government or anybody else claiming title to the property or objecting the ownership of the predecessors of petitioner. Another plea was raised that before the urban land ceiling authorities also proceedings had been taken out and properties were found to be belonging to owners and they are in possession. Petitioner also opposed the claim of respondent No.1 on the ground that right, title or interest of the Government, if any, over the property is extinguished because of enjoyment of property by petitioner's predecessors openly, peacefully and uninterruptedly in assertion of their rights. Thus, the title or claim was also by adverse possession. Number of other allegations were made, which we need not reiterate at this stage since they are irrelevant for the present order. On the pleadings, following issues were framed:

i. Whether the Government is the owner of the petition schedule land ?

ii. Whether the respondent has grabbed the said land ?

iii. Whether the interested persons have any right in the land as claimed by them ?

iv. To what relief ?

Parties led their respective evidence. Learned Special Court extensively dealt with the evidence, which also need not be discussed by us at this stage. Suffice it to say that one of the questions posed by the Special Court was about the payment of sale consideration by Farhatullah and Mirza Mohd. Ali pursuant to the allotment made in their favour. Evidence was led on the point that on receipt of the applications from Farhatullah and Mirza Mohd.Ali files were opened and notices were issued by the Jubilee Hills Municipality for cancelling the assignment of land in their favour. But, the learned Special Court held that evidence was not forthcoming of consideration having been paid. There was a lot of controversy as regards payment of consideration amount as also that whether due to non-payment, order, if

any, was passed resuming the land. However, writ petitioners filed application for production of a register (Sarfekhas Mubarak for the period 1335 Fasli to 1351 Fasli). The said application being I.A.No.84 of 1989 was opposed by respondent No.1 on the ground that no such register was existing. On behalf of petitioner No.1, it was brought to the notice of the Special Court that documents in support of his case, which ought to be in possession of respondent No.1 have not been filed and they were suppressed. This point was also negatived by the Special Court. In nutshell, for want of sufficient evidence on behalf of petitioners, respondent No.1 was held to have proved its case and thus application of respondent No.1 was allowed and orders were issued directing eviction of writ petitioners. During the pendency of writ petition also, petitioners filed an application in W.P.M.P.No.9734 of 1990 for production of 'original register of disposal' for the year 1335 to 1351 Fasli from the custody of Commissioner, Survey, Settlement and Land Records. Though the application was opposed by respondent No.1 on the ground that the Deputy Director, Central Survey Office, Hyderabad reported that no such record was available in his office and that he had already filed a sworn affidavit dated 18-3-1989 before the Special Court stating that the register sought for was not available, the register came to be filed before the Court pursuant to an order passed by this Court on 16-8-1990. Learned single Judge also made reference to a detailed additional affidavit filed on behalf of respondents as to how register had seen the light of the day. Learned single Judge thereafter without taking the said register as a material evidence in the case decided the writ petition as if he was sitting in appeal over the orders of the Special Court. He made this comment on various entries made in the register and by making reference to the additional affidavit, that there was any amount of suspicion and doubt as to the way in which the entries came to be made in the register. He also made observation as regards production of register and entries made in different handwritings. In nutshell, learned single Judge dismissed writ petition, which order has since been set aside by the Supreme Court and writ petition has been directed to be posted before us.

The very fact that there is vital and material piece of evidence, which petitioner No.1 as a respondent before Special Court wanted to be produced and marked was not produced before the Special Court. But by virtue of orders passed by learned single Judge of this Court in W.P.M.P.No.9734 of 1990, dated 16-8-1990, it was filed

in Court. Entries made in the register, if are to be relied upon, had direct bearing on the outcome of the case one way or the other. Therefore, the proper course, which ought to have been adopted, in our considered opinion, is to set aside the order of the Special Court with a direction to hear and decide the L.G.C. afresh in accordance with law, after permitting petitioners herein to lead evidence with regard to the register, which they sought to be produced before the Special Court. But in writ petition, it will not be permissible to take any additional evidence, since writ petition is not an appeal against order of the Special Court. If that be the position, petitioners have to adduce further evidence before the Special Court. In view of the above, we allow the writ petition and set aside impugned Order, with direction that Special court will take L.G.C.No.21 of 1988 on its record and proceed to dispose of the same in accordance with law. Special Court will also afford an opportunity to the respondents herein and petitioners before it to rebut such evidence, in accordance with law. Till the matter is considered and decided by the Special Court, it is directed that status quo as regards nature of land shall continue to be maintained. Any further orders, if any, in the matter will be obtained by the parties from the Special Court.

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(**DEVINDER GUPTA, CJ**)

19th August, 2004

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(**C.V. RAMULU,J**)

Prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Nineteenth day of August Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Mandal Revenue Officer
Golconda , Hyderabad.
2 The Registrary, Special Court

Under the A.P.Land Grabbing

(Prohibition) Act ,1982,

Basheerbagh , Hyderabad.
3 The Commissioner

Municipal Corporation of Hyderabad

Lower Tank Bund Road , Hyderabad.

4. 2CCs to the Advocate General, High Court Buildings, Hyderabad (O.U.T.)

5. 2CD copies

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